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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Canadian Coalition Against the Death
Penalty, et al.,

Plaintiffs,

vs.

Charles L. Ryan,

Defendant.

No. CIV 02-1344-PHX-EHC

ORDER

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Pending before the Court are (1) Plaintiffs' Motion for Summary Judgment [Dkt. 38], and (2) Defendant's Motion for Summary Judgment. [Dkt. 37]. The parties have filed the appropriate Responses [Dkts. 40, 41] and Replies. [Dkts. 42, 43]. Plaintiffs seek (1) a declaration that the Arizona statutes codifying House Bill 2376¹ ("HB 2376") are unconstitutional, and (2) a permanent injunction to enjoin Defendant² from enforcing HB 2376. Defendant seeks dismissal of Plaintiff's Complaint.

I. Factual Summary and Procedural History

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Plaintiffs are prisoner and human rights advocacy groups that maintain Internet websites "as an integral part of their advocacy and public education work." [Dkt. 33, p. 2, ¶

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¹ A.R.S. §§ 31-235(C), (D); 31-242; and 41-1604(A)(9).

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² Terry Stewart's successor, Charles L. Ryan, has been substituted as Defendant in this action. Rule 25(d), Fed.R.Civ.P.

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1 2]. Plaintiffs publish first-hand accounts from prisoners on their websites and often send
2 information to prisoners in the mail.

3 In 2000, the Arizona Legislature passed HB 2376. Pursuant to Arizona statute,
4 inmates housed by the Arizona Department of Corrections ("ADC") are prohibited from
5 sending mail to or receiving mail from a communication service provider ("Provider"), or
6 from having access to the Internet through a Provider. ADC is required to sanction inmates
7 who (1) correspond or attempt to correspond with a Provider, or (2) request any person
8 access a Provider's website.

9 Former Director Terry Stewart subsequently implemented Director's Instruction #156
10 ("DI #156") to set forth statutory prohibitions regarding inmate Internet access. Pursuant to
11 DI # 156,³ any inmate suspected of violating the Internet policy received a written notice
12 from ADC alerting the inmate (1) unauthorized Internet use had been detected; (2) about the
13 website(s) where information regarding the inmate had appeared; and (3) disciplinary
14 sanctions would be administered and criminal sanctions might result if the inmate did not
15 have all information regarding the inmate removed from the website(s) within three weeks.

16 ADC imposed disciplinary sanctions on at least five inmates because their names
17 appeared on Internet websites. Each inmate stated either (1) he had requested his information
18 be placed on the website before such requests constituted ADC policy violations; (2) he had
19 no role in posting his information on the website; or (3) he had been unsuccessful in having
20 his information removed from the website. Sanctions have included verbal counseling,
21 reprimands, placement in Parole Class Three,⁴ extra duty, disciplinary detention, and loss of
22 privileges with respect to visits, phone calls, and commissary.

23 Plaintiffs filed this action on July 18, 2002. [Dkt. 1]. On December 16, 2002, the
24 Court issued a Preliminary Injunction enjoining Defendant from enforcing the statutes
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26 ³ HB 2376 and DI #156 will be collectively referred to as HB 2376.

27 ⁴ Inmates in this parole class are not eligible to earn release credits.
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1 codifying HB 2376 pending a final determination of the constitutionality of the statutes. [Dkt.
2 25].

3 **II. Standing**

4 Although actual enforcement of HB 2376 is directed at prisoners, Plaintiffs have
5 standing to challenge HB 2376's limiting effects on the circulation of their message. Bantam
6 Books, Inc. v. Sullivan, 372 U.S. 58, 64, 83 S.Ct. 631, 636 n.6 (1963); LSO, Ltd. v. Stroh,
7 205 F.3d 1146, 1153-54 (9th Cir. 2000) (following Sullivan).

8 **III. Motions for Summary Judgment**

9 Summary judgment is proper "only if no genuine issues of material fact remain for
10 trial and the moving party is entitled to judgment as a matter of law." Block v. City of Los
11 Angeles, 253 F.3d 410, 416 (9th Cir. 2001). The Court must view evidence in a light most
12 favorable to the nonmoving party. Id.

13 **A. Standard of Review**

14 When constitutional rights of both inmates and outsiders are implicated,⁵ the standard
15 of review becomes whether the regulation "is reasonably related to legitimate penological
16 objectives, or whether it represents an exaggerated response to those concerns." Turner v.
17 Safley, 482 U.S. 78, 87, 107 S.Ct. 2254, 2261 (1987) (internal quotation marks and citation
18 omitted); see also Thornburgh v. Abbott, 490 U.S. 401, 411, 109 S.Ct. 1874, 1880 n.9
19 (1989). This test has four elements:

20 (1) whether there is a valid, rational connection between the prison regulation
21 and the legitimate governmental interest put forward to justify it; (2) whether
22 there are alternative means of exercising the right that remain open to prison
23 inmates; (3) what impact accommodation of the asserted constitutional right
will have on guards and other inmates, and on the allocation of prison
resources generally and (4) whether there exist ready alternatives ... that fully

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25 ⁵ Although the parties have stipulated the Arizona Legislature "was motivated, *in part*,
26 by the concern that crime victims and their relatives would be upset by viewing [I]nternet
27 web sites [sic] featuring the prisoners who had victimized them" [Dkt. 33, p. 4, ¶ 8]
(emphasis added), the record does not reflect HB 2376 "is *centrally* concerned with
28 restricting the rights of outsiders rather than prisoners." California First Amendment
Coalition v. Woodford, 299 F.3d 868, 878 (9th Cir. 2002) (emphasis added).

1 accommodate[] the prisoner's rights at *de minimis* cost to valid penological
2 interests."

3 Woodford, 299 F.3d at 878 (citing Turner, 482 U.S. at 89-91, 107 S.Ct. at 2262-63) (internal
4 quotation marks omitted).

5 **1. Rationally related to a legitimate penological objective**

6 Defendant asserts the blanket restriction on communications between inmates and
7 Providers is necessary to prevent attempts to defraud the public and to preclude inappropriate
8 contact with minors, victims, or other inmates. [Dkt. 37, pp. 6-7]. However, existing
9 regulations and statutes already preclude such conduct. Arizona statutes criminalize fraud,
10 and ADC regulations prohibit inmates from sending mail with the intent to defraud or
11 otherwise illegally solicit assistance. A.R.S. Title 13, Chapter 23; ADC Department Order
12 ("DO") 909.01, § 1.3.7. ADC policies also prohibit inmates from corresponding with (1)
13 minors; (2) victims of their crimes; (3) other inmates; (4) any person who requests not to
14 receive mail from the inmate; or (5) "anyone to whom lewd, threatening, or similar offensive
15 material has been sent by the inmate[.]" DO 909.01, § 1.3.

16 Defendant also has methods in place to enforce these existing regulations. First,
17 inmates have no direct Internet access. [Dkt. 33, p. 4, ¶ 7]. Second, prison staff members
18 may open all incoming mail and inspect it for contraband. DO 909.02, § 1.1. Moreover, all
19 incoming mail that is not privileged may be read to determine if the contents might facilitate
20 criminal activity. Id. Third, outgoing mail may also be read and examined for contraband.
21 DO 909.03, §§ 1.2, 1.6. If ADC finds extensive monitoring of inmate mail to be difficult or
22 expensive, it is permitted to impose limits on the volume of mail inmates may receive.⁶
23 Crofton v. Roe, 170 F.3d 957, 960 (9th Cir. 1999). Finally, current prison regulations permit

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25 ⁶ Although Defendant asserts the 1973 consent decree in Hook v. Arizona, CIV 73-97-
26 PHX-SMM, inhibits ADC's ability to limit the volume of mail inmates receive, Defendant
27 failed to cite any language in the Hook decree to support this assertion. Moreover, the Court
28 notes Defendant has a motion pending to vacate the Hook decree and dismiss that case.
[Hook, Dkt. 747].

1 staff members to monitor and record inmates' telephone calls. DO 915.02, § 1.1; 915.05, §
2 1.1; [see also Dkt. 33, p. 7, ¶ 21].

3 Defendant's remaining arguments with respect to penological objectives also lack
4 merit because "prison authorities cannot avoid court scrutiny under Turner by reflexive, rote
5 assertions." Armstrong v. Davis, 275 F.3d 849, 874 (9th Cir. 2001), cert. denied, __ U.S. __,
6 123 S.Ct. 72. For example, Stardust Johnson's testimony alone is insufficient to support
7 Defendant's assertions that "[s]ociety as a whole may perceive confinement as less punitive,
8 and victims of crime may perceive that the individuals who preyed upon them are not being
9 adequately punished." [Dkt. 37, p. 9].

10 Likewise, Terry Stewart's affidavit [Dkt. 16, Exh. A] does little to support Defendant's
11 assertion that "rehabilitative opportunities will be further limited." [Dkt. 37, p. 8]. Even
12 when ADC was enforcing HB 2376, Stewart stated inmates were not permitted Internet
13 access for rehabilitation purposes because ADC could not provide adequate supervision.
14 [Dkt. 16, Exh. A, p. 2, ¶ 7]. Stewart did not state he anticipated greater resources in the
15 future that would enable ADC to provide such supervision. Rather than demonstrating HB
16 2376 is rationally related to the proffered goal of rehabilitation, Stewart's affidavit indicates
17 ADC is unlikely to provide inmates with Internet access for rehabilitation purposes
18 regardless of the outcome of this action.

19 Finally, Defendant offers no evidence to support the similarly speculative outcome
20 that the goal of deterrence will be impaired because "[b]oth the inmate and the general public
21 may perceive incarceration as 'less arduous.'" [Dkt. 37, p. 8]. Although prison authorities
22 are permitted to establish regulations in anticipation of potential problems, "they must at a
23 minimum supply some evidence that such potential problems are real, not imagined."
24 Woodford, 299 F.3d at 882 (citations omitted).

25 **2. Remaining Turner factors**

26 The Ninth Circuit has held the "rational relationship factor of the Turner standard is
27 a sine qua non[.]" and failure to satisfy this prong requires a finding of unconstitutionality.
28 Prison Legal News v. Cook, 238 F.3d 1145, 1151 (9th Cir. 2001). Because the Court finds

1 the statutes codifying HB 2376 are not rationally related to legitimate penological objectives
2 and are therefore unconstitutional, it need not consider the remaining Turner factors.

3 Accordingly,

4 **IT IS ORDERED** that Plaintiffs' Motion for Summary Judgment [Dkt. 38] is
5 **GRANTED.**

6 **IT IS FURTHER ORDERED** that Defendant, Defendant's employees, agents,
7 servants, attorneys, and all other persons acting in concert or participation with Defendant
8 are permanently enjoined from, directly or indirectly, enforcing Arizona House Bill 2376,
9 codified at A.R.S. §§ 31-235(C), (D); 31 -242; and 41-1604(A)(9).

10 **IT IS FURTHER ORDERED** that Defendant's Motion for Summary Judgment [Dkt.
11 37] is **DENIED.**

12 DATED this 16 day of May, 2003.

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Earl H. Carroll
16 United States District Judge
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